statute in derogation of the previous law, particularly when it was Common Law, is strictly construed.[7] Much stress has been laid also on the rule that when a statute admits of two constructions, and one imposes a duty impossible to perform, the other should be preferred. If the Safety Appliance Act were construed absolutely it would result in a carrier's being liable for a break or defect that occurred in a car moving between stations, no matter how quickly it was discovered and remedied;[8] and it has been pointed out that such a rule would lead to the absurd result that the very act of repairing a defective coupler would make a case and work a forfeiture.[9]

In support of the majority rule it has also been said that an unjust construction should be avoided where possible.[10] The object of the statute is fully accomplished without subjecting the railroad to the burden of an insurer.[11]

It is to be regretted that the only Supreme Court utterance on this subject (which, however, is under a different section and therefore not binding on the Court in the principal case), is in accord with the absolute construction of the Act. On principle the doctrine of the principal case would seem to be preferable.

Re-entry and Forfeiture of Estates on Condition.

In a recent Arkansas case[1] the Court, in an elaborate opinion, held that the grantor of an estate on condition might after breach of the condition convey the land without re-entry and that the grantee might enforce the forfeiture for breach of the condition. This decision is based on two grounds (1) that the doctrine of livery of seisin does not exist in Arkansas and (2) that there is no law against maintenance in that state.

(1) The doctrine that an entry, or its equivalent, by the grantor, or his heir, is necessary before the forfeiture of an estate for breach of condition can be effected, had its origin in the theory that, as livery of seisin was necessary for the creation of a freehold estate, a ceremony of equal solemnity

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[7] *R. R.* v. *Brinkmeier,* 93 Pac. 621; Endlich, Interpretation of Statutes, § 127.

[8] *U. S.* v. *Ry.,* 156 Fed. 182.

[9] *U. S.* v. *Ry.,* 150 Fed. 442.

[10] Endlich, Interpretation of Statutes, § 258; Bishop on Statutory Crimes, § 82.

[11] *U. S.* v. *Ry.,* 156 Fed. 182.

[1] *Moore* v. *Sharpe,* 121 S. W. 341.

was essential to its termination.[2] Where, therefore, the doctrine of livery of seisin does not prevail the logical conclusion is that an entry is unnecessary, and in the United States generally the doctrine prevails that an action of ejectment may be maintained without proof of entry, either for the reason stated above, or on the ground that the confession of entry involved in the action is sufficient.[3]

(2) The Common Law rule that conditions cannot be taken advantage of save by the grantor or his heirs and are therefore incapable of assignment is of feudal origin, and the reason thereof was stated by Coke to be "for avoiding of maintenance, suppression of right, and stirring up of suits."[4] It is submitted, however, that this reason applies only to the case of an assignment after breach of condition, and that the reason why there can be no assignment before breach is that the grantor has "only a possibility of reverter,—a naked and very remote possibility, but nothing that he could convey to an assignee."[5] In Mass, however, it would seem that the courts are inclined to give greater substance to the right of entry before breach of condition. In one case it is said that the grant of an estate on condition subsequent "leaves in the grantor a vested right, which by its very nature is reserved to him as a present existing interest transmissible to his heirs."[6] But the weight of authority holds that the grantor in such a case has a bare possibility of reverter, and the cases support the view that this is the real reason why there can be no assignment *before* breach of condition.[7] *After* breach of condition the grantor has a right to enter or (where entry is unnecessary) a right to bring ejectment, and the test of the transferability of such right must be the existence or non-existence of the law against maintenance. In the case of *McKissick* v. *Pickle*[8] the Supreme Court of Pennsylvania said: "The law against maintenance has never been adopted in this State. The reason assigned why a condition in England could not be assigned is because no title could be made to land held by another adversely as that was against the law which forbid mainte-

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[2] *Co. Litt.*, 214b, Litt. § 351.

[3] *Cowell* v. *Colorado Springs Co.*, 100 U. S. 55; *Austin* v. *Parish*, 21 Pick. 215.

[4] *Co. Litt.*, 214a.

[5] *Nicoll* v. *R. R.*, 12 N. Y. 121.

[6] *Church* v. *Grant*, 3 Gray, 142, 148.

[7] *Bethlehem* v. *Annis*, 40 N. H. 34, 45; *Bouvier* v. *R. R.*, 67 N. J. L. 281.

[8] 16 Pa. 140.

nance. * * * This is a fair case for the application of the maxim *cessante ratione cessat ipse lex.*" In that case the right of entry for breach of condition was reserved to the assigns in the deed creating the conditional estate, but in New Jersey, in the case of *Bouvier* v. *R. R.*[9] it was held that this was not essential. In the course of the opinion in the latter case the Court said, "I think that in any case wherever the English law against maintenance is not in force a right of entry for condition broken should be held transferable after breach of the condition. Before breach I think transfer to be legal must be authorized by legislation."

The results of the foregoing considerations may be summarized as follows:

(1) Where the doctrine of livery of seisin is not in force there is no necessity of entry for breach of condition.

(2) Before breach the right of entry for condition broken is transferable only by statutory authority.

(3) After breach the transferability of the right of entry depends upon the existence or non-existence of the law against maintenance.

Gaming Contracts Governed by Lex Loci Contractus, Not by Lex Fori.

In the case of *Saxby* v. *Fulton*[1] we have an interesting illustration of the attitude of the English courts upon the subject of loans for gambling purposes. In this case one Brooks and the plaintiff had been in the habit of together paying annual visits to Monte Carlo. It was their custom for the plaintiff to find the whole of the money for the expenses of both, while Brooks made all the arrangements and paid the bills out of money supplied to him for that purpose. Accounts were settled after their return to England, when the expenses of the trip were shared equally between them, and the balance remaining due from the one to the other was discharged. This action was brought to recover the balance due plaintiff on money advanced by him during their trips in 1905 and 1906. The greater part of the advances had been used by Brooks for the purpose of gambling at the roulette tables at Monte Carlo, roulette being lawful at that place, but unlawful in England by statute, and the judges assumed that plaintiff knew when he

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[9] 67 N. J. L. 281.

[1] L. R. 1909, ii K. B. 208.